



General Assembly

January Session, 2013

***Raised Bill No. 6640***

LCO No. 4437



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***AN ACT AMENDING THE CONNECTICUT BUSINESS CORPORATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 33-706 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2013*):

4 (g) [A] Unless an appointment of a proxy otherwise provides, an  
5 appointment made irrevocable under subsection (d) of this section  
6 continues in effect after a transfer of the shares and a transferee takes  
7 subject to the appointment, except that a transferee for value of shares  
8 subject to an irrevocable appointment may revoke the appointment if  
9 he did not know of its existence when he acquired the shares and the  
10 existence of the irrevocable appointment was not noted conspicuously  
11 on the certificate representing the shares or on the information  
12 statement for shares without certificates.

13 Sec. 2. Section 33-776 of the general statutes is repealed and the  
14 following is substituted in lieu thereof (*Effective October 1, 2013*):

15 (a) A corporation may indemnify and advance expenses under  
16 sections 33-770 to 33-779, inclusive, as amended by this act, to an  
17 officer [, employee or agent] of the corporation who is a party to a  
18 proceeding because he is an officer [, employee or agent] of the  
19 corporation (1) to the same extent as a director, and (2) if he is an  
20 officer [, employee or agent] but not a director, to such further extent [,  
21 consistent with public policy,] as may be provided by contract, the  
22 certificate of incorporation, the bylaws or a resolution of the board of  
23 directors except for (A) liability in connection with a proceeding by or  
24 in the right of the corporation other than for expenses incurred in  
25 connection with the proceeding, or (B) liability arising out of conduct  
26 that (i) constitutes a knowing and culpable violation of law by the  
27 officer, (ii) enabled the officer to receive an improper personal gain,  
28 (iii) showed a lack of good faith and conscious disregard for the duty  
29 of the officer to the corporation under circumstances in which the  
30 officer was aware that his conduct or omission created an unjustifiable  
31 risk of serious injury to the corporation, or (iv) constituted a sustained  
32 and unexcused pattern of inattention that amounted to an abdication  
33 of the officer's duty to the corporation. A corporation may delegate to  
34 its general counsel or other specified officer or officers the ability  
35 under this subsection to determine that indemnification or advance for  
36 expenses to such officer [, employee or agent] is permissible and the  
37 ability to authorize payment of such indemnification or advance for  
38 expenses. Nothing in this subdivision shall in any way limit either the  
39 ability or the obligation of a corporation to indemnify and advance  
40 expenses under other applicable law to any officer [, employee or  
41 agent] who is not a director.

42 (b) The provisions of subdivision (2) of subsection (a) of this section  
43 shall apply to an officer [, employee or agent] who is also a director if  
44 the basis on which he is made a party to the proceeding is an act or  
45 omission solely as an officer. [, employee or agent.]

46 (c) An officer [, employee or agent] of a corporation who is not a  
47 director is entitled to mandatory indemnification under section 33-772

48 and may apply to a court under section 33-774 for indemnification or  
49 advance for expenses, in each case to the same extent to which a  
50 director may be entitled to indemnification or advance for expenses  
51 under said sections.

52 (d) A corporation which was incorporated under the laws of this  
53 state, whether under chapter 599 of the general statutes, revised to  
54 January 1, 1995, or any other general law or special act, prior to  
55 January 1, 1997, shall, except to the extent that the certificate of  
56 incorporation expressly provides otherwise, indemnify under sections  
57 33-770 to 33-779, inclusive, as amended by this act, except subdivision  
58 (2) of subsection (a) of section 33-771, each officer, employee or agent  
59 of the corporation who is not a director to the same extent as the  
60 corporation is permitted to provide the same to a director pursuant to  
61 subdivision (1) of subsection (a) and subsections (b), (c) and (d) of  
62 section 33-771, as limited by section 33-775, and for this purpose the  
63 determination required by section 33-775 may in addition be made by  
64 the general counsel of the corporation, or such other or additional  
65 officer or officers as the board of directors may specify.

66 Sec. 3. Section 33-777 of the general statutes is repealed and the  
67 following is substituted in lieu thereof (*Effective October 1, 2013*):

68 A corporation may purchase and maintain insurance on behalf of an  
69 individual who is a director [.] or officer [, employee or agent] of the  
70 corporation, or who, while a director [.] or officer [, employee or agent]  
71 of the corporation, serves at the corporation's request as a director,  
72 officer, partner, trustee, employee or agent of another domestic or  
73 foreign corporation, partnership, joint venture, trust, employee benefit  
74 plan or other entity, against liability asserted against or incurred by  
75 him in that capacity or arising from his status as a director [.] or officer  
76 [, employee or agent,] whether or not the corporation would have  
77 power to indemnify or advance expenses to him against the same  
78 liability under sections 33-770 to 33-779, inclusive, as amended by this  
79 act.

80       Sec. 4. Section 33-778 of the general statutes is repealed and the  
81       following is substituted in lieu thereof (*Effective October 1, 2013*):

82       (a) A corporation may, by a provision in its certificate of  
83       incorporation or bylaws or in a resolution adopted or a contract  
84       approved by its board of directors or shareholders, obligate itself in  
85       advance of the act or omission giving rise to a proceeding to provide  
86       indemnification in accordance with section 33-771 or advance funds to  
87       pay for or reimburse expenses in accordance with section 33-773. Any  
88       such obligatory provision shall be deemed to satisfy the requirements  
89       for authorization referred to in subsection (c) of section 33-773 and  
90       subsection (c) of section 33-775. Any such provision that obligates the  
91       corporation to provide indemnification to the fullest extent permitted  
92       by law shall be deemed to obligate the corporation to advance funds to  
93       pay for or reimburse expenses in accordance with section 33-773 to the  
94       fullest extent permitted by law, unless the provision specifically  
95       provides otherwise.

96       (b) A right of indemnification or to advances for expenses created  
97       by this subpart or under subsection (a) of this section and in effect at  
98       the time of an act or omission shall not be eliminated or impaired with  
99       respect to such act or omission by an amendment of the certificate of  
100       incorporation or bylaws or a resolution of the directors or  
101       shareholders, adopted after the occurrence of such act or omission,  
102       unless, in the case of a right created under subsection (a) of this  
103       section, the provision creating such right and in effect at the time of  
104       such act or omission explicitly authorizes such elimination or  
105       impairment after such act or omission has occurred.

106       (c) Any provision pursuant to subsection (a) of this section shall not  
107       obligate the corporation to indemnify or advance expenses to a  
108       director of a predecessor of the corporation, pertaining to conduct with  
109       respect to the predecessor, unless otherwise specifically provided. Any  
110       provision for indemnification or advance for expenses in the certificate  
111       of incorporation, bylaws or resolution of the board of directors or

112 shareholders of a predecessor of the corporation in a merger or in a  
113 contract to which the predecessor is a party, existing at the time the  
114 merger takes effect, shall be governed by subdivision (3) of subsection  
115 (a) of section 33-820.

116 (d) Subject to subsection (b) of this section, a corporation may, by a  
117 provision in its certificate of incorporation, limit any of the rights to  
118 indemnification or advance for expenses created by or pursuant to  
119 sections 33-770 to 33-779, inclusive, as amended by this act.

120 (e) Sections 33-770 to 33-779, inclusive, as amended by this act, do  
121 not limit a corporation's power to pay or reimburse expenses incurred  
122 by a director or officer in connection with his appearance as a witness  
123 in a proceeding at a time when he is not a party.

124 (f) Sections 33-770 to 33-779, inclusive, as amended by this act, do  
125 not limit a corporation's power to indemnify, advance expenses to or  
126 provide or maintain insurance on behalf of an employee or agent.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	33-706(g)
Sec. 2	<i>October 1, 2013</i>	33-776
Sec. 3	<i>October 1, 2013</i>	33-777
Sec. 4	<i>October 1, 2013</i>	33-778

Section 1	<i>October 1, 2013</i>	33-706(g)
Sec. 2	<i>October 1, 2013</i>	33-776
Sec. 3	<i>October 1, 2013</i>	33-777
Sec. 4	<i>October 1, 2013</i>	33-778

***Statement of Purpose:***

To amend the Connecticut Business Corporation Act in a manner that is consistent with the Model Business Corporation Act.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*